IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 9216 of 2006(V)

PETITIONER:

P.V.BHASKARAN, AGED 81,
PUTHELI HOUSE, NEELESWARAM.P.O,
KALADY, ERNAKULAM.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS:
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1. **THE UNION OF INDIA,**
   REPRESENTED BY THE SECRETARY,
   MINISTRY OF HOME AFFAIRS,
   NEW DELHI.

2. **THE UNDER SECRETARY TO GOVERNMENT OF INDIA,**
   FREEDOM FIGHTERS DIVISION,
   MINISTRY OF HOME AFFAIRS,
   NEW DELHI.

BY ADV. SRI.S.ABILASH, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 9216/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER OF THE DISTRICT COLLECTOR ,ERNAKULAM DT.19.11.82.

EXT.P2:- COPY OF THE ORDER OF THE 2ND RESPONDENT DT. 6.8.86.

EXT.P3:- COPY OF THE PROFORMA FOR RECEIVING INFORMATION IN RESPECT OF A REJECTED CASE DT. 18.10.1989.

EXT.P4:- COPY OF THE MEMO ISSUED BY THE JUDICIAL 1ST CLASS MAGISTRATE, PERUMBAVOOR D.T. 25.10.1989.

EXT.P5:- COPY OF THE CERTIFICATE ISSUED BY SRI.UOTAMAN AYYAPPAN DT. 18.10.1989.

EXT.P6:- COPY OF THE CO-PRISONER CERTIFICATE ISSUED BY SRI.E.BALANANDAN EX.M.P. DT. 12.2.1981.

EXT.P7:- COPY OF THE REVIEW PETITION DT. 6.12.05.

EXT.P8:- COPY OF THE LETTER DT. 14.11.05 OF THE SUPERINTENDANT, SUB JAIL ALUVA.

/TRUE COPY/

P.A. TO JUDGE

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T.R.RAMACHANDRAN NAIR, J.

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WP(C).No.9216 of 2006-V.

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Dated this the 3rd day of August, 2007.

J U D G M E N T

The petitioner who is aged 81 is before this Court aggrieved by the denial of Swatantrata Sainik Samman (SSS) Pension. The case of the petitioner is that he was arrested and put in the lock up in Aluva Jail from 18.1.1947 to 22.7.1947. He was granted pension by the State Government as per Ext.P1 dated 19.11.1982. The suffering of the petitioner has been certified by Shri.E.Balanandan, Ex-M.P. as per Ext.P6 certificate (co-prisoner's certificate). He has certified that he had suffered imprisonment during the freedom struggle and was lodged in Aluva Jail in Ernakulam district during the period from 10.1.1947 to 2.8.1947 and that the petitioner was lodged in the same Jail along with him during the period from 18.1.1947 to 22.7.1947. The respondents by communication dated 6.8.1986 Ext.P2 informed that it is not possible to consider his case for grant of pension for the reasons stated therein. The first one is that, "the documentary/supporting evidence sent by you along with your application does not prove your claim of suffering". The other is that, "you have not produced evidence in support of your suffering as per requirements of the scheme". Ext.P2 evidences the fact that there is letter from the Chief Secretary to Government of Kerala, General Administration

(FFP) Department, Thiruvananthapuram, No.112594/FFP B3/84 GAD dated 12.4.1986. It is evident that the State had recommended the same since no such defect is point out in Ext.P2 even though Item No.5 relates to recommendation by the State Government. Therefore it is clear that the authorities of the State have enquired into the matter and forwarded their report.

2. The petitioner thereafter applied to the criminal court for getting copies of the jail records. Ext.P4 shows that the records for the year 1947 is not available and hence the same cannot be issued. Ext.P4 is issued from the office of the Judicial First Class Magistrate Court, Perumbavoor. He has produced another certificate from the co-prisoner's marked as Ext.P5. Again by Ext.P7 sent through registered post he has sought for reconsideration of the issue. Ext.P8 is the reply issued by the Office of the Superintendent of Sub Jail, Aluva stating that the records of 1947 are not available.

3. The learned counsel for the petitioner submits that the reasons stated in Ext.P2 to reject the application is unsustainable. The petitioner had produced the co-prisoner's certificate from Shri.E.Balanandan, Ex-M.P. and his application has been duly recommended by the State Government also as no such objection has been evidently taken in Ext.P2. Counsel for the petitioner placed reliance in the Judgment in OP.No.6904/2000 to contend that when the State Government has recommended the application the same

is equivalent to non-availability of record certifications. The relevant portion of the said Judgment is extracted below:

> **"After verification of their applications by the revenue authorities, the District Advisory Committee recommended their cases and after verification of the particulars, the State Government recommended the same. That is equivalent to non-availability of record certifications."**

4. In the light of the above it can be seen that the reasons stated in Ext.P2 to reject the application are not sustainable. The petitioner is a recipient of State pension also. The Government has not taken any action on the application submitted by him so far. It is, therefore, clear that going by the certificates produced, the petitioner is a bonafide freedom fighter and his claim ought to have been considered under the Scheme for grant of pension. Therefore, there will be a direction to the respondents to pass fresh orders on the same within a period of two months from the date of receipt of a copy of this Judgment after considering the matter on the merits and after considering the materials produced herein. The respondents will also consider the claim for arrears of pension atleast from the date of Ext.P2.

The writ petition is disposed of as above. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-

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